

JUDICIAL MERIT SELECTION COMMISSION

Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(Incumbent)

Full Name: David Craig Brown

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Florence, SC 29501

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1. Why do you want to serve another term as a Circuit Court Judge?

I have lived in South Carolina all of my life. This state has afforded me many opportunities and multiple life experiences. These opportunities and life experiences has created a desire within me to give back and serve this state that has been so gracious to me. My desire to serve and the life experiences that I have had would give me an opportunity to continue to have a positive impact in my community and throughout this state.

2. Do you plan to serve your full term if re-elected?

Yes.

3. Do you have any plans to return to private practice one day?

No.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Ex Parte communications are improper, except under certain circumstances. Ex Parte communications are governed by Rule 501, Code of Judicial Conduct, Canon 3(B)(7). All parties or their attorney(s) should be included in communications with a judge. However, there are circumstances where *ex parte* communications may be proper for such matters as scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits.

Even in these situations, such contact is improper unless the judge reasonably believes that no party will gain a procedural or tactical advantage and the judge makes provisions to promptly notify all other parties of the substance of the *ex parte* communication and allows everyone an opportunity to respond.

Ex Parte communications are expressly authorized in certain situations such as the issuance of a temporary restraining order,



determination of fees and expenses for indigent capital defendants, and the issuance of a seizure order regarding delinquent insurers.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

These situations will arise, but they do not necessarily require recusal. My obligation and responsibility is to uphold the integrity and independence of the judiciary.

I would first determine if there was any objection to me hearing the matter. I would then hear each party's argument. If their argument presented some evidence that may result in the appearance of prejudice or bias by me, I would then be obligated to recuse myself. Otherwise, I would hear the case and rule, ensuring that my findings were supported by law and fact on the record.

7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

Rule 501, Code of Judicial Conduct, Canon 3, requires that I perform the duties of judicial office impartially. The rule further requires that I uphold the integrity and independence of the judiciary. My actions should promote the confidence in the integrity and impartiality of the judiciary.

If what I disclosed had the "appearance of bias or prejudice," I would grant the moving party's motion to recuse myself if my conduct would create, in reasonable minds, a perception that my ability to carry out my judicial responsibilities with integrity, impartiality, and competence was impaired.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I would first address the issue with my spouse or close relative and inform them again of the relevant ethical restraints that apply to judges and their family members to ensure it does not happen again.

If the matter involved a case that was before me, and such financial or social involvement of my spouse or a close relative raised questions about my impartiality and the integrity of the judicial office, then I would possibly disqualify myself from the matter. However, prior to disqualifying myself, I would disclose on the record the basis of my disqualification and ask the parties and their attorneys to consider, out of my presence, whether they wished to waive my disqualification. If, following full disclosure of the basis for disqualification, the parties agreed that I should not be disqualified and I was willing to participate, then I would do so and put the agreement on the record.

9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

The standards I have set for myself are governed by Rule 501, Code of Judicial Conduct, Canon 4(D)(5)(a)-(i). I do not accept gifts or social hospitality that might reasonably be perceived to exploit my position as a judge or that could reasonably be perceived to influence me in any way.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

If the conduct of a lawyer or judge raised a substantial question as to their honesty, trustworthiness or fitness as a lawyer or judge, then I would fully comply with my duties under our rules and report them to the appropriate professional authority, the Commission on Lawyer Conduct or the Commission on Judicial Conduct.

11. Are you affiliated with any political parties, boards or commissions that, if you were re-elected, would need to be re-evaluated?

No.

12. Do you have any business activities that you would envision remaining involved with if reelected to the bench?

I would remain an owner of rental property through KMH Properties, LLC, f/k/a KatMar, LLC and Old Stallions, LLC. These are real estate holding companies which are managed by a property management group. They do not require any of my time, only financial contributions when necessary.

13. How do you handle the drafting of orders?

Ordinarily I have attorneys submit proposed orders in a format that I am able to review, alter if necessary, and then sign. However, I draft my own orders on occasion but it depends on the posture of the case. Prior to signing any order though, I give all counsel of record an opportunity to review the order and submit any proposed changed or additions.

14. What methods do you use to ensure that you and your staff meet deadlines?

I use a calendaring system via computer and hard copy to ensure that deadlines are met even if computer systems are down.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

I do not believe that "judicial activism" is proper. Judges are required to uphold the integrity and independence of the judiciary. This requires full compliance with all statutes, case law, and applicable rules. The function of the judiciary is not to set or promote public policy. Thus, the personal feelings of a member of the judiciary should not be promoted.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

Since being elected to the Circuit Court in 2010, I have spoken at a continuing legal education seminar entitled, The Investigation and Prosecution of CDV and CSC Crimes. I have also served as a panelist on a number of continuing legal education seminars pertaining to ethics. Furthermore, I have been asked to serve and currently serve on the Supreme Court's Commission on Alternative Dispute Resolution and the Supreme Court's Commission on the Profession. I will continue to serve in these capacities and others when called upon to do so to improve the law, legal system, and the administration of justice.

17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

No. My wife and I just celebrated our twentieth anniversary. I started law school in August of 1994, went into private practice in May of 2001 and was elected to the Circuit Court in February 2010. My wife has seen the demands of the legal profession and she has supported me throughout my career.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

- a. Repeat offenders:

I would want to know the reason for such action and how the judicial system could help that individual. For example, if their addiction to drugs is what causes them to repeat, I would want to sentence them in a manner that would help them deal with their addiction so they would not repeat again.

Furthermore, our legislature, in a number of situations, has passed laws enhancing the penalties for "repeat offenders." I would look at the facts and circumstances of each case as presented by the state and victims, if any, along with any mitigation presented by the defense. I would then implement a sentence within the parameters established by our legislature to punish the defendant for the offense.

- b. Juveniles (that have been waived to the circuit court):

If a juvenile was before me, it would be a serious offense. I would look at such factors as whether or not the juvenile was a leader or follower; if the juvenile had a prior record at the time he committed the offense for which he was before me; and, I would listen to the state, victims, defendant and the attorney for the defendant. Taking all of this into consideration, I would then impose a sentence in a manner that would provide just punishment for the offense and that

would hopefully rehabilitate the juvenile and keep him/her from falling into the class of "repeat offenders."

c. White collar criminals:

The manner and sophistication of the offense does not minimize its effects. Therefore, I would look at such things as the nature and sophistication of the offense, the sophistication of the offender, the number of victims involved and the impact of the offense on the victims. I would then implement a sentence within the parameters as established by our legislature to punish the offender for the offense.

d. Defendants with a socially and/or economically disadvantaged background:

Having grown up in a socially and economically disadvantaged area, I believe that could relate very well to the circumstances of these cases and these offenders. I would sentence these individuals in a way that would provide just punishment as established by our legislature but avail them to the opportunities that are available to assist them and help them out of their socially and economically disadvantaged situation. These tools may include such opportunities as job corps, vocational rehabilitation or adult education.

e. Elderly defendants or those with some infirmity:

In dealing with these types of offenders, as well as others, I would look at the facts and circumstances, along with the prescribed punishment for such offense as established by our legislature. I would also take into consideration such things as the offender's health, work history, and prior record, if any, before implementing a sentence that I believe would justly, fairly and adequately punish the offender to ensure they did not fall into the class of "repeat offender" at a later time.

In conclusion, I would treat each group of offenders with the same respect and dignity that I would want them to treat me if I were in their situation. Each case with each class of offenders would have to be looked at individually, since each case is separate and distinct from the next.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

I would advise the parties and their lawyers of the situation, allow them to confer out of my presence and make a decision as to whether or not they would waive such potential disqualification. If the parties agreed that there was no basis for disqualification, I would probably hear the case after incorporating the agreement on the

record. If my impartiality might reasonably be questioned, I would not hear the case.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?

No.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes.

23. What do you feel is the appropriate demeanor for a judge?

I believe that the demeanor of a judge should be one who is self-disciplined, humble, patient and thankful for the opportunities that he has had, knowing that others have not had the same opportunities. I believe that judges should treat others with the same honor, respect, and dignity as they want to be treated. Judges should be honest and trustworthy in all of their dealings, so as to uphold the integrity and independence of the judiciary. Finally, I believe that judges should be conscientious, diligent, and hardworking, not too good to perform any task necessary to complete the job.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

The rules that I set forth in my answer to question 23 should apply seven days a week, twenty-four hours a day. Judges never know who may be watching and the potential impact, good or bad, that they could have on others.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

Anger is not appropriate when dealing with the public, criminal defendants, attorneys, or pro se litigants. A judge is supposed to be impartial in his decisions and anger could very well affect a judge's ability to be impartial, which in turn would affect the integrity and impartiality of the judiciary.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

None.

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign?

No.

28. Have you sought or received the pledge of any legislator prior to this date?

No.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No.

30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?

No.

31. Have you contacted any members of the Judicial Merit Selection Commission?

No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted?

Yes.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/ David C. Brown _____

Sworn to before me this 9 day of July, 2014.

Stacey M. Rogers

(Print Name)

Notary Public for South Carolina

My commission expires: September 21, 2014